

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| ALEXSAM, INC.                    | ) |                                    |
| Plaintiff,                       | ) | Civil Action No. 2:13-cv-2         |
|                                  | ) |                                    |
| v.                               | ) | The Honorable Michael S. Schneider |
|                                  | ) |                                    |
| BEST BUY STORES LP               | ) | The Honorable Caroline S. Craven   |
| Defendant.                       | ) |                                    |
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| ALEXSAM, INC.                    | ) |                                    |
| Plaintiff,                       | ) | Civil Action No. 2:13-cv-3         |
|                                  | ) |                                    |
| v.                               | ) | The Honorable Michael S. Schneider |
|                                  | ) |                                    |
| BARNES & NOBLE, INC., AND BARNES | ) | The Honorable Caroline S. Craven   |
| & NOBLE MARKETING SERVICES       | ) |                                    |
| CORP.                            | ) |                                    |
| Defendants.                      | ) |                                    |
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| ALEXSAM, INC.                    | ) |                                    |
| Plaintiff,                       | ) | Civil Action No. 2:13-cv-4         |
|                                  | ) |                                    |
| v.                               | ) | The Honorable Michael S. Schneider |
|                                  | ) |                                    |
| THE GAP, INC., AND DIRECT        | ) | The Honorable Caroline S. Craven   |
| CONSUMER SERVICES, LLC           | ) |                                    |
| Defendants.                      | ) |                                    |
| <hr/>                            |   |                                    |
| ALEXSAM, INC.                    | ) |                                    |
| Plaintiff,                       | ) | Civil Action No. 2:13-cv-5         |
|                                  | ) |                                    |
| v.                               | ) | The Honorable Michael S. Schneider |
|                                  | ) |                                    |
| J.C. PENNEY CO., INC., AND       | ) | The Honorable Caroline S. Craven   |
| J.C. PENNEY CORP.                | ) |                                    |
| Defendants.                      | ) |                                    |
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|-----------------------------------|---|------------------------------------|
| ALEXSAM, INC.                     | ) |                                    |
| Plaintiff,                        | ) | Civil Action No. 2:13-cv-6         |
|                                   | ) |                                    |
| v.                                | ) | The Honorable Michael S. Schneider |
|                                   | ) |                                    |
| MCDONALD'S CORP., AND             | ) | The Honorable Caroline S. Craven   |
| P2W, INC., NFP                    | ) |                                    |
| Defendants.                       | ) |                                    |
| ALEXSAM, INC.                     | ) |                                    |
| Plaintiff,                        | ) | Civil Action No. 2:13-cv-7         |
|                                   | ) |                                    |
| v.                                | ) | The Honorable Michael S. Schneider |
|                                   | ) |                                    |
| TOYS "R" US – DELAWARE, INC., AND | ) | The Honorable Caroline S. Craven   |
| TRU-SVC, LLC                      | ) |                                    |
| Defendants.                       | ) |                                    |
| ALEXSAM, INC.                     | ) |                                    |
| Plaintiff,                        | ) | Civil Action No. 2:13-cv-8         |
|                                   | ) |                                    |
| v.                                | ) | The Honorable Michael S. Schneider |
|                                   | ) |                                    |
| THE HOME DEPOT, U.S.A., INC., AND | ) | The Honorable Caroline S. Craven   |
| HOME DEPOT INCENTIVES, INC.       | ) |                                    |
| Defendants.                       | ) |                                    |

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**JOINT NOTICE OF SUMMARY JUDGMENT AND DAUBERT FILINGS  
RELEVANT TO INVALIDITY AND INEQUITABLE CONDUCT**

Pursuant to the Court's Order of February 25, 2013<sup>1</sup>, the parties hereby jointly identify the following summary judgment and *Daubert* filings that are applicable to the consolidated invalidity and enforceability trial.

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<sup>1</sup> (2:13-cv-2 Dkt. No. 61; 2:13-cv-3 Dkt. No. 30; 2:13-cv-4 Dkt. No. 31; 2:13-cv-5 Dkt. No. 32; 2:13-cv-6 Dkt. No. 32; 2:13-cv-7 Dkt. No. 32; 2:13-cv-8 Dkt. No. 32.)

## **Summary Judgment<sup>2</sup>**

- (1) Alexsam's Motion For Partial Summary Judgment To Dismiss Defendants' Inequitable Conduct Defenses And Counterclaims (filed in each of the seven cases) (2:13-cv-2 Dkt. No. 23, 2:13-cv-3 Dkt. No. 22, 2:13-cv-4 Dkt. No. 23, 2:13-cv-5 Dkt. No. 24, 2:13-cv-6 Dkt. No. 23, 2:13-cv-7 Dkt. No. 24, 2:13-cv-8 Dkt. No. 24);
- (2) Alexsam's Motion for Partial Summary Judgment That The MobilGo System Is Not Anticipatory Prior Art Or Evidence Of Conception Of The Kmart System (filed in each case except *Best Buy*) (2:13-cv-3 Dkt. No. 23, 2:13-cv-4 Dkt. No. 24, 2:13-cv-5 Dkt. No. 25, 2:13-cv-6 Dkt. No. 25, 2:13-cv-7 Dkt. 25, 2:13-cv-8, 2:13-cv-8 at Dkt. No. 25.);
- (3) Alexsam's Motion For Partial Summary Judgment Dismissing Affirmative Defense Alleging That The WorldDial System Is Invalidating Anticipating Prior Art (filed in the *Best Buy* case only) (2:13-cv-2 Dkt. No. 22);
- (4) Alexsam's Motion For Partial Summary Judgment To Dismiss Defendants' On-Sale Bar Defenses And Counterclaims (filed in each of the seven cases) (2:13-cv-2 Dkt. No. 16 (regarding evidence identified by Best Buy), 2:13-cv-3 Dkt. No. 14, 2:13-cv-4 Dkt. No. 15, 2:13-cv-5 Dkt. No. 16, 2:13-cv-6 Dkt. No. 15, 2:13-cv-7 Dkt. No. 15, 2:13-cv-8 Dkt. No. 15) (regarding evidence identified by Fisch Defendants).

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<sup>2</sup> Defendant Best Buy Stores, L.P. ("Best Buy") has filed a Motion for Partial Summary Judgment Regarding Laches and *Res Judicata* (2:13-cv-2 Dkt. No. 17). Best Buy believes this motion is more applicable to the Best Buy non-infringement trial than to the invalidity and unenforceability trial. While Best Buy is aware that some opinions in this District may be read to suggest that laches is an invalidity or unenforceability-related defense, *see Eon Corp. IP Holdings, LLC v. Skytel Corp.*, No. 08-385, 2009 WL 8590963, \*4 (E.D. Tex. April 29, 2009), the operative facts for the laches issues in the present cases are specific to each Defendant and its particular accused products. Accordingly, trying the laches issues in connection with the Defendant-specific liability trials would be most efficient.

**Daubert Motions**

- (1) Alexsam's *Daubert* Motion To Exclude Expert Testimony Regarding Intent Or Truthfulness As To Alleged Inequitable Conduct Affirmative Defense And Counterclaim (filed in each of the seven cases) (2:13-cv-2 Dkt. No. 20 (regarding Best Buy's expert Loftesness); 2:13-cv-3 Dkt. No. 15, 2:13-cv-4 Dkt. No. 16, 2:13-cv-5 Dkt. No. 17, 2:13-cv-6 Dkt. No. 16, 2:13-cv-7 Dkt. No. 16, 2:13-cv-8 Dkt. No. 16) (regarding Fisch Defendants' expert Reef);
- (2) Alexsam's *Daubert* Motion To Exclude Portions Of Loftesness/Reef Opinions Re Alleged Inherency Or Obviousness (filed in each of the seven cases) (2:13-cv-2 Dkt. No. 26 (regarding Best Buy's expert Loftesness); 2:13-cv-3 Dkt. No. 21, 2:13-cv-4 Dkt. No. 22, 2:13-cv-5 Dkt. No. 20, 2:13-cv-6 Dkt. No. 19, 2:13-cv-7 Dkt. No. 23, 2:13-cv-8 Dkt. No. 23) (regarding Fisch Defendants' expert Reef).

Date: February 28, 2013

/s/ Alison Aubry Richards

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**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on February 28, 2013. Any other counsel of record will be served by first class mail.

/s/ Alison Aubry Richards  
*Attorney for Plaintiff, Alexsam, Inc.*